

**WESTBANK FIRST NATION**  
**NOISE AND DISTURBANCES CONTROL**  
**LAW NO. 2005-08**

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law to regulate or prohibit the making or causing of noises or sounds within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation enacts the following law:

**1. TITLE**

1.1 This Law may be cited for all purposes as the "*WFN Noise and Disturbances Control Law No. 2005-08*".

**2. DEFINITIONS**

2.1 In this Law, unless the context otherwise requires:

**"Council"** means the governing body of Westbank elected pursuant to the *Westbank First Nation Constitution*;

**"highway"** includes all public streets, roads, lanes, ways, trails, bridges, viaducts, trestles, ferry landings and approaches and any other public way designated or intended for use by the general public for the passage of vehicles, and every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited and includes the roadway, shoulder, boulevard, ditch and sidewalk area and whatever lands lie between the property lines of the highway, but does not include a private right of way on private property;

**"motor boat"** means a boat or any vehicle used on water that is powered by an engine;

**"parcel of land"** or **"parcel"** means any lot, block, manufactured home pad or other area in which real property within Westbank Lands is held or into which real property within Westbank Lands is subdivided and the improvements affixed to it;

**"peace officer"** means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

**"person"** in addition to its ordinary meaning, includes any association, household, society, corporation, partnership or party, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law;

**"registered holder"** means a person who is registered in the Westbank Lands Register as the holder of an interest in Westbank Lands and, where applicable, includes the occupant;

**"Westbank"** or **"WFN"** means the Westbank First Nation as defined in the *Westbank First Nation Constitution*;

**“Westbank Lands”** means:

- (a) the following Westbank Indian Reserves:
  - (i) Mission Creek Indian Reserve No. 8
  - (ii) Tsinstikeptum Indian Reserve No. 9
  - (iii) Tsinstikeptum Indian Reserve No. 10
  - (iv) Medicine Hill Indian Reserve No. 11
  - (v) Medicine Creek Indian Reserve No. 12; and
- (b) lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

**“WFN Law Enforcement Officer”** means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of Westbank Laws enacted by Council, and includes any delegate or any peace officer.

2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

2.3 Words defined in the *Motor Vehicle Act*, and the *Local Government Act*, shall have the same meaning when used in this Law unless defined in this Law or unless the context otherwise requires.

### **3. GENERAL REQUIREMENTS**

3.1 No person shall make or cause, or permit to be made or caused, any noise in or on a highway or elsewhere within Westbank Lands which disturbs the peace, rest, quiet, enjoyment, comfort or convenience of any person or persons in the neighborhood or vicinity.

3.2 No person being the registered holder of a parcel of land knowingly shall allow or permit such parcel to be used so that noise or sound which emanates therefrom, disturbs the peace, rest, quiet, enjoyment, comfort, or convenience of any person or persons in the neighborhood or vicinity.

3.3 No person shall play or operate any radio, stereophonic equipment or other instrument or any apparatus for the production or amplification of sound either in or on private premises or in any public place in such a manner as to disturb the peace, rest, quiet, enjoyment, comfort, or convenience of any person or persons in the neighborhood or vicinity.

3.4 No person shall own, keep or harbor any animal or bird which by its barks, cries or sounds unduly disturbs the peace, rest, quiet, enjoyment, comfort or convenience of any person or persons in the neighborhood or vicinity.

3.5 No person within Westbank Lands shall on any day before 7:00 a.m. or after 10:00 p.m. construct, erect, re-construct, alter, repair or demolish any building, structure or thing or excavate or fill in land in any manner whatsoever which makes, causes noise or sounds in or on a highway or elsewhere within Westbank Lands which disturb or tend to disturb,

the peace, rest, quiet, enjoyment, comfort or convenience of any person or persons in the neighborhood or vicinity.

- 3.6 Notwithstanding other provisions of this Law, in particular subsection 3.5, a person may apply to the WFN Law Enforcement Officer, or to any other person duly authorized by Council, for and receive from Westbank a permit authorizing the making of reasonable noise or sounds.
- 3.7 Notwithstanding any provisions of this Law, a person may perform works of an emergency nature for the preservation or protection of life, health or property but the onus will be on the person performing the work to show cause that the work was of an emergency nature.
- 3.8 Notwithstanding the provisions of this Law, a person may apply for and receive a permit for a special event in accordance with Westbank Law, in which permit the requirements of this Law may be waived by Council acting in the best interest of Westbank.
- 3.9 Notwithstanding the other provisions of this Law, where farming practices require the operation of machinery equipment for the production of crops, working farms are exempt from the provisions of this Law.
- 3.10 No person shall create a nuisance or disturbance upon any portion of a highway or other public place, including any place to which the public reasonably has access, by participating in a fight or other similar physical confrontation between consenting or non-consenting persons.

#### **4. MOTOR BOATS**

- 4.1 No person shall launch a motor boat from any parcel of land within Westbank Lands if that motor boat is equipped with an exhaust system that permits the exhaust gases from the engine to be expelled directly into the air without first passing through the water unless the motor boat is equipped with a muffling device that ensures the exhaust gases from the engine are cooled and expelled without excessive noise.
- 4.2 No person shall operate a motor boat within Westbank Lands if the motor boat is equipped with an exhaust system that permits the exhaust gases from the engine to be expelled directly into the air without first passing through water unless a motor boat is equipped with a muffling device that ensures the exhaust gases from the engine are cooled and expelled without excessive noise.
- 4.3 No person shall operate a motor boat powered by an engine equipped with exhausting devices commonly described as dry stacks or dry headers.
- 4.4 No person shall operate a motor boat powered by an engine equipped with exhausting devices commonly described as water-injected headers unless a properly operating muffler is installed thereto.
- 4.5 No person shall operate a motor boat powered by an engine equipped with exhausting devices commonly described as over-transom water cooled exhaust unless a properly operating muffler is installed thereto.

- 4.6 No person shall operate a motor boat so as to cause noise which disturbs the peace, rest, enjoyment, comfort or convenience of the neighborhood or of persons in the vicinity.

## **5. FEES AND FORMS**

- 5.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WFN administration building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

## **6. NOTICES & CHARGES AGAINST REGISTERED HOLDERS**

- 6.1 Where Westbank is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

## **7. OFFENCES**

- 7.1 No person shall obstruct, interfere with or hinder Council, the WFN Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 7.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.
- 7.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 7.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.

## **8. IMMUNITY**

- 8.1 No action for damages lies or may be instituted against present or past Council, WFN Law Enforcement Officer, or members, employees, servants or agents of either Westbank or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or

- (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.

8.2 Section 8.1 does not provide a defence if:

- (a) Council, WFN Law Enforcement Officer, members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
- (b) the cause of action is libel or slander.

8.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

8.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law, and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

8.5 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse, and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

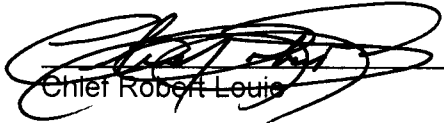
## 9. APPLICATION OF LAW

9.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.

- 9.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.
- 9.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 9.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

BE IT KNOWN that this Law entitled, "WFN Noise and Disturbances Control Law No. 2005-08" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-08 by Council of Westbank First Nation at a duly convened meeting of Council held on the 7<sup>th</sup> day of February, 2005.

Voting in favour of the Law are the following members of Council:

  
Chief Robert Louis

  
Councillor Michael De Guevara

  
Councillor Brian Eli

  
Councillor Loretta Swite

  
Councillor Michael Werstuik

being a majority of those members of Council of Westbank First Nation present at the aforesaid meeting of Council.

The Quorum of Council is three (3) members.

Number of members of Council present at the meeting: 5.